STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 11,279
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services finding that the petitioner is ineligible for day care services due to excess income from a business enterprise.

FINDINGS OF FACT

1. On May 18, 1992 the petitioners, who work together in their own business, applied for a day care subsidy for their three small children with the Department of Social and Rehabilitation Services.

2. In support of their application, the petitioners supplied the Department with certain IRS forms including two "Schedule C" forms which showed the profit and loss from two businesses which they operate out of the same building with the same personnel. One schedule showed a loss of $26,429.00 for a nursery/gardener center ("Business A") and the other a profit of $24,109.00 for a mail order seed company ("Business B"). The IRS schedules are attached hereto and incorporated by reference as Exhibit No. 1.

3. In determining the family's income, the Department assigned a 0 income to Business A and assigned the

entire$24,109.00 profit from Business B as income to the family. The assignation of that income when combined with the family's other income rendered the family ineligible for benefits. They were so notified of that ineligibility on May 18, 1992. Copies of the Department's denial and calculations are attached hereto and incorporated by reference as Exhibit No. 2.

4. The petitioners protest that the amount attributed to them as income is erroneous because the profit of the one business was offset by the loss of the other business. The expenses which represented the loss on Business A, they claim, were actually paid out of the profits of Business B.

5. The petitioner was a paid employee of Business A and received income in the amount of $8,710.00 during 1991. The petitioner's husband took $5,200.00 ($100.00 per week) out of Business A for his own salary in that same year.

ORDER

The Department's decision is reversed and remanded to calculate the family's eligibility for benefits in accord with this recommendation.

REASONS

The Department's regulations governing payment of a day care subsidy require that it assess the family's applicable income in determining eligibility. Gross income is defined in the regulations as "the total monthly income received by a child and her/his primary caretakers which is derived from

any source" with sixteen stated exceptions, including "business expenses of self-employment, (other than depreciation charges) in accordance with current IRS procedures". Child Care Services (C.C.S.) ə 4031. Self-employment is further defined as "any business activity conducted by a primary caregiver inside or outside the home which causes a person to receive a monthly net income of at least $100.00". C.S.S. ə 4031.

The petitioner presented IRS statements to the Department showing that her family conducted two intertwined businesses with a combined gross income of over $300,000.00 and claimed business expenses amounting to more than that amount. Because the IRS forms they provided showed a loss in net income at the bottom of the sheet, the Department determined under its definition above that Business A, which operated at a loss, could not be considered self-employment income and had to be totally disregarded.

However, the facts clearly show that both the petitioner and her husband each received income well in excess of $100.00 per month from Business A. All of the petitioner's income came from Business A. Her husband's $100.00 per week income was also derived from Business A. Therefore, it was error for the Department to disregard the profit and loss statement from Business A.

Even had Business B been the sole source of their income, the Department's reading of its own regulation to eliminate joint consideration of the two businesses when

determining the family's income is arbitrary and not in any way designed to arrive at the family's actual total monthly income. The regulation cited by the Department has as its primary purpose, as the Department admitted at hearing, to distinguish "real" self-employment enterprises from those which are not producing any income in order to establish the service need of a family. It is difficult to imagine that the legislature which approved these regulations would contemplate that they would be interpreted as preventing the Department from analyzing all of a family's self-employment income from all their businesses to try to determine their real income.

The Department's assertion at hearing that it was too administratively burdensome to actually try to figure the family's real income is simply not an acceptable reason for treating this family's income in such an arbitrary and unfair manner. The matter should be remanded to the Department for a calculation of the family's net income from both its business enterprises.

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